

SECOND APPEAL ORDER DISPOSAL STATUS FOR ORDERS RECEIVED IN AUGUST-2020

FULL BENCH

Sl No.	Name of Dealer R.C. No.	Range/Circle /AU	First Appeal No. & Date	Second Appeal Number & Date of Order	Act	Period	Second Appeal filed by State/ Party	Amount Demanded /Refunded (BY 1ST Appellate Authority)	Ground of Appeal	Result of the Tribunal
1	M/S GANESH ENTERPRISES, BALASORE	BALASORE CIRCLE	AA.45/BA-2016-17(VAT) & AA.46/BA-2016-17(ET), DT.20.01.2017	374(VAT) OF 2016-17 & 194(ET) OF 2016-17, DT.12.08.2020	OVAT	01.04.2014 TO 30.09.2015	PARTY	2312673 & 407994	Basing on vigilance report, the Assessment was completed with a demand of Rs 2312673.00 under O Vat Act and a demand of Rs 1541782.00 under OET Act. on alleged sales suppression. The FAA confirmed the assessment on the grounds of escaped assesment against the alleged period. The dealer filed second appeal on the grounds of opposing the jurisdiction of escaped assesment and confirming the finding without enquiry, examination of records and by not following due process of law.	The OSTT set aside the case to LAO for fresh assesment after necessary third party enquiry. In the result, The appeal stands allowed. The impugned orders are hereby set aside. the matter is remitted back with a direction to the AA to hold enquiry with regard to escaped assesment under the OVAT Act and to consider reassessment under the OET Act. providing due opportunity to the dealer.
2	M/S USHA MARTIN LTD., BHADRAK	BHADRAK CIRCLE	AA-6/BDC-2015-16(CST), DT.23.11.2016	111(C) OF 2016-17, DT.12-08-2020	CST	01.04.2012 TO 31.03.2014	PARTY	14,86,018.00	The assessment was completed u/R 12(3) of the CST(O) Rules 1957 with tax demand of Rs 14,86,018.00. The dealer filed first appeal before the FAA on the grounds of correcting the mistake in "C" form. The FAA confirmed the assessment order as the applicant failed to appear before him. The dealer filed second appeal on the grounds that he was not given opportunity to resubmit the rectified "C" form. In the result, the appeal is allowed and the orders are set aside for reassessment within a period of three months.	1. Due to failure to furnish "C" form, the LAO levied tax and interest of Rs. 14,86,018.00. 2. The FAA confirmed the assessment order. 3. At the OSTT, the dealer furnished one "C" form. 4. The case was remitted back to the LAO for fresh assessment.
3	M/S NIRMAN CONSTRUCTION, SAMBALPUR	SAMBALPUR CIRCLE	AA-151(SAI) OF 2006-07, DT.18.07.2006	1487 OF 2006-07, DT.13.08.2020	OST	2002-03	STATE		In absence of books of account, the LAO allowed labour and service charges @ 80% in case of canal work and @ 65% in case of road work 2. The assessment was completed u/s 12(4) of the OST Act with refund of Rs. 5,63,454.00. 3. The FAA confirmed the assessment order on the grounds that the deduction on the road work, earth work and construction to be on higher side. The state filed second appeal on the ground that Rule 4-B was amended on dt. 06.02.2010 giving effect to 30.07.1999, specify labour and service @ 42% in case of Road work and 62% in case of Earth work.	OSTT held that at the time of passing order, the said provision was not there. The appeal filed by the state was dismissed In the result, the appeal was dismissed as it is not a fit case.
4	M/S SAYONARA EXPORTS(P) LTD., BHADRAK	BHADRAK CIRCLE	AA.339/BD-2002-03 & AA-340/BD-2002-03(ET), DT.30.12.2003	3(ET) OF 2004-05, DT.03.02.2020	OET	2001-02	STATE	REDUCED FROM RS.26,99,999/- TO RS.82,499/-	The assessment waa completed u/s 7(3) of the OET Act with tax demand of Rs 26,99,999.00 which was reduced to Rs 82,499.00. by the FAA. The state filed second appeal against the order of the FAA. The findings regarding tax liability under OET Act is consequential to the tax liability under OST Act. As the OST appeal has been decided in favour of the dealer, the OET appeal is also needs to be allowed. In the result, the appeal filed by the state is dismissed.	1.The LAO enhanced GTO of Rs,26,99,999.00. 2.The FAA refunded the amount Rs.82,499.00. 3. The Appeal filed by the State was dismissed sience the demand under ET Act was reduced as scheduled Form under OST Act in SA No.730/2004-05.

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5	M/S BHUBANESWAR CLUB, BHUBANESWAR	BHUBANESWAR II CIRCLE	AA-216/BH-II/06-07, AA-217/BH-II/06-07, AA-218/BH-II/06-07, AA-220/BH-II/06-07 & AA-219/BH-II/06-07, DT.28.02.2014	16 TO 20 OF 2014-15 DT.13.08.2020	OST	2000-01, 2001-02, 2002-03, 2003-04 AND 2004-05	PARTY		The assessment was completed u/s 12(5) of the OST Act 1947 with a conclusion that the club supplies goods to its members for price. As per the nature of trade, it is exigible to tax for carrying business and hence raised demand along with penalty for the said periods. The appellant filed first appeal before the FAA who confirmed the order of assessment. The appellant filed second appeal on the grounds on whether it is liable to pay tax. The learned counsel contended that in view of the ratio laid down by the Hon'ble Apex Court in Calcutta Club Ltd. there is no tax liability under the Act to pay tax in supplying goods.	The OSTT relying on the decision of special court and its own order in S.A. No. 60(VAT) 2007-08 and annulled the demand. In the result, the appeals are allowed and the impugned orders are set aside. As a consequence, the assessments for the said periods are hereby quashed for the reasons indicated above.
6	M/s AMCD Transport And Minerals PVT LTd.	BBSR		SA NO. 8(C)/ 2015-16 SA No. 3(C)/ 2016-17 SA No. 9(C) 2015-16 DT 17.07.2020	CST	2015-16			Assessment was completed U/s 9 (C) of the CST Act. The LAO completed the Assessment under section 12 (1) of the CST (O) Rules. The FAA annulled the assessment order on the ground of No valid notice issued. (SA No 8 (C) and 9(C) /2015-16 filed by the State. In case of S.A. No 9 (C) /2015-16, the dealer failed to submit "H" Form. Hence the FAA confirmed the assessment order. so the dealer's appeal was dismissed.	The OSTT in assessment order directed for fresh assessment by the LAO.

DIVISION & SINGLE BENCH

SI No.	Name of Dealer R.C. No.	Range/Circle/AU	First Appeal No. & Date	Second Appeal Number & Date of	Act	Period	Second Appeal	Amount Demanded / Refunded (BY 1ST Appellate)	Result of Second Appeal Order	Grounds of Appeal
1	M/S SHIVAM GRANITES, BHUBANESWAR	BHUBANESWAR III CIRCLE	AA 1061113110000 69/BHIII/12-13, DT.11.12.2014	5(V) OF 2015-16, DT.04.08.2020	OVA T	01.10.2006 TO 30.04.2011	PART Y	396000	The assessment was completed u/s 42 of the OVAT Act with the demand of Rs 396000.00 including tax of Rs. 1,32,000.00 and penalty of Rs. 2,64,000.00.	1. The OSTT held that for mismatch of ITC, penalty should not be levied. 2. The case is remanded to LAO for fresh order. The